Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1706

By: Representatives Wardlaw, Beaty Jr., Bentley, M. Berry, Bragg, Brown, Deffenbaugh, Dotson, Eaves, Evans, Fielding, V. Flowers, Fortner, Gonzales, M. Gray, Hillman, Holcomb, Jean, Jett, L. Johnson, Love, Lowery, Lynch, Maddox, Magie, McClure, M. McElroy, Richmond, Rye, Scott, Tollett, Tosh, Vaught, Watson, Womack
By: Senators J. Dismang, Beckham, L. Chesterfield, J. English, T. Garner, Gilmore, Hill, Rapert, B. Sample, D. Wallace

For An Act To Be Entitled

AN ACT TO CREATE THE LOGGING AND WOOD FIBER TRANSPORTATION JOB CREATION INCENTIVE ACT; TO CREATE THE ARKANSAS WOOD ENERGY PRODUCTS AND FOREST MAINTENANCE INCOME TAX CREDIT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE LOGGING AND WOOD FIBER TRANSPORTATION JOB CREATION INCENTIVE ACT; AND TO CREATE THE ARKANSAS WOOD ENERGY PRODUCTS AND FOREST MAINTENANCE INCOME TAX CREDIT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Logging and Wood Fiber Transportation Job Creation Incentive Act".

SECTION 2. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

(1) Arkansas is a timber-rich state with over one-half (1/2) of

the total area of the state, or nineteen million (19,000,000) acres, as forestland;

(2) In the southern United States, Arkansas ranks first for the number of hardwood seedlings grown and fourth for the number of total seedlings grown;

(3) Approximately one (1) in every eight (8) Arkansans, equating to about three hundred forty-five thousand (345,000) Arkansans, own forestland;

(4) The forest products industry in Arkansas provides more than twenty-eight thousand (28,000) jobs, largely in rural areas;

(5) Though the state is rich in timber, the growth of the Arkansas pine forest currently exceeds harvest by eleven million (11,000,000) tons per year;

(6) The unharvested Arkansas timber causes innumerable potential jobs to be unfulfilled and the loss of state and local tax revenue and other economic revenue; and

(7) In order to attract industry to use the available fiber resources, support healthy timberland, encourage capital investment in the Arkansas timber industry, and provide well-paying jobs, the creation of a logging and wood fiber transportation job creation income tax credit should be established.

SECTION 3. Arkansas Code § 19-6-301(181), concerning the enumeration of special revenues, is amended to read as follows:

(181) ~~Arkansas Economic Development Incentive Act of 1993 transfers~~ Transfers from general revenues for financial incentive plans~~,~~ and incentive agreements under § 15-4-1607, § 26-51-506(c)(2)(B)(vii), ~~and~~ § 26-51-506(c)(3)(D)(vi), and § 26-51-2704(c)(7)(A);

SECTION 4. Arkansas Code Title 26, Chapter 51, is amended to add an additional subchapter to read as follows:

Subchapter 27 — Arkansas Wood Energy Products and Forest Maintenance Income Tax Credit

26-51-2701. Title.

This subchapter shall be known and may be cited as the "Arkansas Wood

Energy Products and Forest Maintenance Income Tax Credit".

26-51-2702. Legislative purpose and intent.

The purpose and intent of this subchapter is to increase capacity in the state for the use of sawmill residuals, including sawdust and wood chips, thinnings to maintain a healthy forest, unwanted treetops, and damaged or diseased trees not wanted by sawmills.

26-51-2703. Definitions.

As used in this subchapter:

(1) "Cost" means:

(A) In the case of a transfer of title or a lease agreement that is treated as a purchase by a lessee for Arkansas income tax purposes, the amount of the purchase price; and

(B) In the case of a lease that is not a lease agreement that is treated as a purchase by a lessee for Arkansas income tax purposes but that otherwise qualifies as a purchase under this section, the amount of lease payments due to be paid during the term of the lease after deducting any portion of the lease payments attributable to interest, insurance, and taxes;

(2) "Incentive agreement" means an agreement entered into by a business and the Arkansas Economic Development Commission to provide the business an incentive to locate a new qualified wood energy products and forest maintenance project or expand an existing qualified wood energy products and forest maintenance project in Arkansas;

(3)(A) "New full-time permanent employee" means a position or job that:

(i) Is created pursuant to an executed incentive agreement;

(ii) Is filled by one (1) or more employees or contractual employees who:

(a) Were Arkansas taxpayers during the year in which the tax credits or incentives were earned;

(b)(1) Work at the facility identified in the incentive agreement.

(2) New employees of the taxpayer that

enters into the incentive agreement who do not work at the facility may be counted if they:

(A) Otherwise meet the definition of a new full-time permanent employee;

(B) Are subject to the Arkansas Income Tax Withholding Act of 1965, § 26-51-901 et seq.;

(C) Meet an average hourly wage threshold equal to or greater than the state average hourly wage for the preceding calendar year; and

(D) Are verified by reports and methods established as required by the incentive agreement; and

(c)(1) Are not employees hired by a business before the date the incentive agreement was executed unless:

(A) The position or job filled by the existing employee was created in accordance with the incentive agreement; and

(B) The position vacated by the existing employee was either filled by a subsequent employee or no subsequent employee will be hired because the business no longer conducts the particular business activity requiring that classification.

(2) If the Director of the Arkansas Economic Development Commission and the Secretary of the Department of Finance and Administration find that a significant impairment of Arkansas job opportunities for existing employees will otherwise occur, they may jointly authorize the counting of existing employees as new full-time permanent employees; and

(iii) Has been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours worked per week.

(B) "New full-time permanent employee" includes a contractual employee who works at the facility identified in the incentive agreement only if the contractual employee is offered a benefits package comparable to a direct employee of the business seeking incentives under this subchapter;

(4) "Purchase" means:

(A) A transaction under which title to an item is transferred for consideration; or

(B) A lease contract that is entered into for a period of at least three (3) years regardless of whether title to the item is transferred at the end of the period;

(5) "Qualified wood energy products and forest maintenance project" means a project specified in the incentive agreement to include one (1) or more Arkansas facilities in the same ownership group:

(A) For which the taxpayer commenced construction by the date specified in the incentive agreement, but no earlier than January 1, 2020;

(B) That supports the Arkansas timber industry by using low-value wood, including without limitation sawmill residuals, unwanted treetops, and damaged or diseased trees, to produce high-efficiency, high-energy wood energy products;

(C) In which the taxpayer has a total investment in excess of fifty million dollars ($50,000,000);

(D) That is undertaken by a taxpayer who has entered into an incentive agreement with the State of Arkansas in which the taxpayer commits to creating at least one hundred (100) net new full-time permanent employees with an average annual wage of at least sixty thousand dollars ($60,000);

(E) That will provide a positive cost-benefit analysis to the state as determined by the commission and the Office of Economic Analysis and Tax Research;

(F) That is certified as having a closing date before December 31, 2023, for all facilities, by which the taxpayer has certified and the state has verified that necessary capital acquisition and borrowing for the facilities has occurred to ensure that funds will be available to:

(i) Secure a site for the facilities;

(ii) Obtain engineering services for the facilities;

(iii) Purchase equipment for the facilities; and

(iv) Commence construction on the facilities; and

(G) That is undertaken by a taxpayer that has elected by agreement with the State of Arkansas for the taxpayer's facilities to be classified as a qualified wood energy products and forest maintenance project; and

(6)(A) "Wood energy products equipment" means:

(i) New or used machinery or equipment located in Arkansas on the last day of the taxable year that is operated or used exclusively in Arkansas to collect, separate, treat, pulverize, dry, modify, or convert wood fiber so the resulting product may be used as a raw material, for productive energy use, or to manufacture other materials;

(ii) Devices that are directly connected with or are an integral and necessary part of machinery or equipment operated or used exclusively in Arkansas to collect, separate, treat, pulverize, dry, modify, or convert wood fiber and are necessary for the collection, separation, treatment, pulverization, drying, modification, or manufacturing of wood fiber;

(iii) Equipment that produces energy with wood power; and

(iv) A device that is directly connected with or is an integral and necessary part of machinery or equipment operated or used exclusively in Arkansas to produce energy with wood power.

(B) "Wood energy products equipment" does not include a vehicle or trailer that is licensed or that normally would be licensed for use on highways in Arkansas.

26-51-2704. Arkansas wood energy products and forest maintenance income tax credit.

(a) There is allowed a tax credit against the tax imposed by this chapter in an amount equal to thirty percent (30%) of the costs of wood energy products equipment purchased for use in Arkansas after the date specified in the incentive agreement by a taxpayer that:

(1) Is engaged in the business of collecting, separating, treating, pulverizing, drying, modifying, or manufacturing wood energy products; and

(2) Has been certified as owning a qualified wood energy products and forest maintenance project.

(b)(1) If a tax credit is allowed under this section and, as of the end of the taxable year in which the tax credit is first allowed, the taxpayer does not have a public retirement system of the State of Arkansas as a proprietor, partner member, shareholder, or holding an interest, the lesser of five million dollars ($5,000,000) or the amount of income tax due by the taxpayer may be claimed each year.

(2)(A) Any unused tax credit that cannot be claimed in a tax year under subdivision (b)(1) of this section may be carried forward indefinitely to apply the unused tax credit to future tax liability.

(B) Beginning July 1, 2021, and by July 15 of each subsequent year, a taxpayer shall provide notice to the Department of Finance and Administration of the amount of tax credits, including without limitation tax credits the taxpayer expects will receive certification during the fiscal year by the Department of Energy and Environment, subject to the limitation in subdivision (b)(1) of this section, that will be sold or transferred for value.

(c)(1) If at the time of the execution of the incentive agreement the taxpayer that owns a qualified wood energy products and forest maintenance project is a proprietorship, partnership, limited liability company, or other business organization and any portion of the tax credits allowed under this section would be apportioned to a public retirement system of the State of Arkansas as proprietor, partner, member, or shareholder of the taxpayer, the public retirement system shall have the possession and control of all tax credits, including without limitation any tax credits allowed under this section and otherwise apportioned to the other proprietors, partners, members, shareholders, or beneficiaries.

(2) The possession and control of tax credits by a public retirement system under this subsection shall be confirmed in writing by the office of the Department of Finance and Administration charged with the administration of the tax credits allowed under this section.

(3) A public retirement system that has possession and control of tax credits under this subsection shall sell or transfer for value the tax credits allowed under this section to the State of Arkansas for eighty percent (80%) of the face value in lieu of the right of a proprietor, partner, member, shareholder, or beneficiary of the qualified wood energy products and forest maintenance project to claim the tax credits as otherwise allowed under applicable state law.

(4) Subject to the total tax credit allowed under this section for a qualified wood energy products and forest maintenance project, the maximum amount of tax credits allowed under an incentive agreement between

the taxpayer and the state, and the annual transfer by the commission as agreed by the state and the taxpayer, no more than five million dollars ($5,000,000) of the tax credits in the possession and control of the public retirement system with respect to a qualified wood energy products and forest maintenance project under this subsection may be sold or transferred each year.

(5) Any unused tax credit that cannot be sold or transferred in a tax year by the operation of subdivision (c)(4) of this section may be carried forward indefinitely to be sold or transferred by future operation of subdivision (c)(4) of this section.

(6) Beginning July 1, 2021, by July 15 of each year, a public retirement system with possession and control of tax credits under this subsection shall provide notice to the Department of Finance and Administration of the amount of tax credits, including without limitation tax credits the public retirement system expects will receive certification during the fiscal year by the Department of Energy and Environment, subject to the limitation in subdivision (c)(4) of this section, to be sold or transferred for value.

(7)(A) The State of Arkansas shall pay the purchase price equal to eighty percent (80%) of the face value of all the tax credits included in the notice required under subdivision (c)(6) of this section on or before June 30 of the calendar year following the calendar year in which the notice was provided for all tax credits certified by the Department of Energy and Environment by warrant from the Economic Development Incentive Fund funded by a transfer from general revenue.

(B) Tax credits under this subsection sold or transferred for value to the State of Arkansas are extinguished upon payment of the purchase price as if claimed against the tax imposed by this chapter.

(C)(i) In the event the State of Arkansas fails to timely pay the purchase price required under subdivision (c)(7)(A) of this section for the tax credits included in the notice required under subdivision (c)(6) of this section, the public retirement system may, before the end of the taxable year following the taxable year in which failure to pay occurs, sell or transfer for value such tax credits to one (1) or more persons.

(ii) The person or persons to whom the tax credits are sold or transferred under subdivision (c)(7)(C)(i) of this section may claim the tax credits in accordance with applicable law.

(iii) Any tax credits sold or transferred for value under subdivision (c)(7)(C)(i) of this section shall not expire before the end of the third taxable year following the year in which the tax credits were sold or transferred for value under this section.

(D) The sale or transfer of tax credits under this subdivision (c)(7) shall be confirmed in writing by the office of the Department of Finance and Administration charged with the administration of the tax credit allowed under this section.

(d) A tax credit under this section shall not be authorized without:

(1) A cost-benefit analysis, including without limitation an analysis of other incentives offered by the State of Arkansas with respect to the qualified wood energy products and forest maintenance project subject to the tax credit, as certified by the director in consultation with the Chief Fiscal Officer of the State; and

(2) An incentive agreement with performance criteria and claw back provisions as required under subsection (e) of this section.

(e) The issuance, sale, and transfer of a tax credit authorized under this section shall be subject to an incentive agreement with performance criteria and claw back provisions between the taxpayer and the commission that:

(1)(A) Is subject to the approval of the Chief Fiscal Officer of the State to ensure that the cost-benefit analysis required under subsection (d) of this section is met and maintained for a test period that is the longer of the life of the tax credits or twelve (12) years, subject to the limitation stated in subdivision (e)(1)(B) of this section.

(B) The test period described in subdivision (e)(1)(A) of this section shall not be longer than fifteen (15) years; and

(2) Shall include without limitation the:

(A) Capital investment for the qualified wood energy products and forest maintenance project;

(B) New full-time permanent employee positions created by the qualified wood energy products and forest maintenance project;

(C) Annual salary requirements for the new full-time permanent employee positions created by the qualified wood energy products and forest maintenance project;

(D) Timeline for fulfilling the investment of job creation targets stated in the performance and claw back agreement; and

(E) Conditions for the claw back provisions, which are triggered if, during the test period stated in subdivision (e)(1) of this section, the taxpayer:

(i) Does not meet the required targets of the qualified wood energy products and forest maintenance project related to capital investment, job creation, timeline, or annual salary amounts; or

(ii) Fails to maintain a positive cost-benefit analysis.

SECTION 5. EFFECTIVE DATE. Sections 1-4 of this act are effective for tax years beginning on or after January 1, 2021.